



January 4, 2015

Request for Appeal and Waiver-CC Docket No. 02-6
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Request for APPEAL -Erate Year 17 (2014-15)
SLD Administrator's Decision on Commitment Decision Letter

Dear Sir or Madam,

- Billed Entity Number: **142906**
- Name of BEN: **Alhambra Elementary School Dist # 68**
- Contact person name: **Nan Williams**
- Contact information: Director of Technology
4510 N. 37th Ave.
Phoenix, AZ 85019-3206
(602) 336-2953
FAX (602)336-0313
nanwilliams@alhambraesd.org
- Form 471 Application Number: **943752**
- **Funding year : 2014 -2015 – Erate yr 17**
- Funding Request Numbers (FRNs): **2573936**
- SLD Action Appealed: **November 5, 2014, - Administrator's Commitment Adjustment**

Funding Commitment Decision: \$0.00 - Selective - Bidding Violation
Funding Commitment Decision Explanation: MR1: The Contract Award Date was changed from 01/19/2010 to 02/01/2010 to agree with the documentation provided during the review of the FCC Form 471. <><><><><> MR2: Although Block 7b of your Funding Year 2010 FCC Form 470 indicates you were seeking a multi-year contract, your contract does not include a definite end to the number of extensions. Program requirements do not allow for contracts with indefinite terms. Therefore, you must file a new FCC Form 470, evaluate your bids and sign a new contract with a finite contract term for the next Funding Year for which you will seek this service. <><><><><> DR1: Based on the documentation you provided during the Selective Review, you did not consider all of the bids received in response to the Form 470 and/or RFP during your bid evaluation process. Your bid scoring worksheets did not contain a score for each vendor that provided a response. Therefore, your FRN is being denied because the winning vendor was not selected in accordance with your bid evaluation process. <><><><><> DR2: Documentation provided demonstrates that the price of the eligible products and services was not the primary bid evaluation factor in selecting the winning bidder. Program rules require that applicants select the most cost-effective provider, with price being the primary evaluation factor. Since you did not meet this requirement, this FRN must be denied.

Reason for Appeal and a Request for Waiver:

1 - We are appealing the Administrators' decision for a Funding Commitment Adjustment letter dated November 5, 2014 for **2573936**. This FRN received a funding denial due to the results of the selective reviews conducted by USAC. This FRN is for the same service as the prior appeals filed with the FCC –

- Form 471 Application Number: **740556**
- **Funding year : 2010-2011 – Erate yr 13**
- Funding Request Numbers (FRNs): **2001077**
- SLD Action Appealed: **June 12, 2014, - Administrator's Commitment Adjustment Letter**
- Form 471 Application Number: **792775**
- **Funding year : 2011-2012 – Erate yr 14**
- Funding Request Numbers (FRNs): **2166379**
- SLD Action Appealed: **June 12, 2014, - Administrator's Commitment Adjustment**
- Form 471 Application Number: **828905**
- **Funding year : 2012-2013 – Erate yr 15**
- Funding Request Numbers (FRNs): **2257957**
- SLD Action Appealed: **June 12, 2014, - Administrator's Commitment Adjustment**
- Form 471 Application Number: **899427**
- **Funding year : 2013-2014 – Erate yr 16**
- Funding Request Numbers (FRNs): **2445607**
- SLD Action Appealed: **June 5, 2014, - Administrator's Commitment Decision letter**

All of these FRN's are for the same service (web hosting) and are through the same service provider **SPIN: 143028153**.

All these FRN's are based on the Erate year 13/2010 form 470 posting that resulted in a multiyear contract with **SPIN: 143028153-Centrifuge Solutions /Edline**.

ALHAMBRA YEAR 13 REPORT														
471 Applicati on Number	FRN	Applicant Name	BEN	SPIN	Service Provider Name	Commitment Status	486 SSD	Last Date to Invoice	Cmtl Category of Service	Committed Amount	Cmtl Total Cost	Cmtl Commitment Request	Invoicing Mode	Total Authorized Disbursement
740556	2001077	ALHAMBRA EL	142906	143028153	Centrifuge S	FUNDED	7/1/2010	10/28/2011	INTERNET ACC	\$12,480.00	\$12,480.00	\$11,107.20	SPI	\$11,107.20

ALHAMBRA YEAR 14 REPORT														
471 Applicati on Number	FRN	Applicant Name	BEN	SPIN	Service Provider Name	Commitment Status	486 SSD	Last Date to Invoice	Cmt'd Category of Service	Requested Amount	Cmt'd Total Cost	Cmt'd Commitment Request	Invoicing Mode	Total Authorized Disbursement
792775	2166379	ALHAMBRA EL	142906	143028153	Edline, LLC	FUNDED	7/1/2011	1/28/2013	INTERNET ACC	\$12,480.00	\$12,480.00	\$10,982.40	SPI	\$10,652.93

ALHAMBRA YEAR 15 REPORT														
471 Applicati on Number	FRN	Applicant Name	BEN	SPIN	Service Provider Name	Commitment Status	486 SSD	Last Date to Invoice	Cmt'd Category of Service	Requested Amount	Cmt'd Total Cost	Cmt'd Commitment Request	Invoicing Mode	Total Authorized Disbursement
828905	2257957	ALHAMBRA EL	142906	143028153	Edline, LLC	FUNDED	7/1/2012	1/23/2013	INTERNET ACC	\$12,480.00	\$12,480.00	\$11,107.20	SPI	\$10,773.98

ALHAMBRA YEAR 16 REPORT														
471 Applicati on Number	FRN	Applicant Name	BEN	SPIN	Service Provider Name	Commitment Status	486 SSD	Last Date to Invoice	Cmt'd Category of Service	Requested Amount	Cmt'd Total Cost	Cmt'd Commitment Request	Invoicing Mode	Total Authorized Disbursement
899427	2445607	ALHAMBRA EL	142906	143028153	Edline, LLC	NOT FUNDED		10/28/2014	INTERNET ACC	\$12,480.00	\$0.00	\$0.00	NOT SET	

2 – During the SRIR response period we provided documentation regarding the individual bids submitted. USAC made the following **Finding #1 for the prior FRN's for this same service -**

Finding 1

After multiple requests for documentation and application review it has been determined that this funding commitment must be rescinded in full. On the FY 2010 FCC Form 470, you certified that all bids received would be carefully considered. It was determined that you failed to consider all bids submitted since you disqualified some bidders for not hosting other vendors contents. The applicant did not post the requirement on the FCC Form 470 and there was no RFP to inform the bidders of such a requirement. FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services ordered, and by submitting a complete description of services requested so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to otherwise provide detailed and specific information of the services sought, you prevented the potential bidders from formulating their bids, you violated the competitive bidding process. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.

Prior to the release of the form 470, Alhambra issued a RFP on Nov 25, 2009, a 40 page document containing extensive details of the Districts needs and due on Dec 17, 2009. This was an RFP (Request for Proposal) due to the fact Alhambra School District did not know what part numbers, options, pricing, ERate eligibility or service requirements that might be provided or required. Note that Page 16 of that RFP indicated price as being the primary criteria. It also listed the Implementation and data integration details since this project would affect almost 15,000 students and 17 sites. There were 6 responders to the RFP.

A Request for Bid (RFB) indicates the need for specific products or services with part numbers already determined.

This RFP provided the same type of information as a RFI (Request for Information) or, similar to the Erate process prior to filing a form 470, initial discovery, contact with service providers, discussion and webinars. The District had no way of knowing if objectives could be met or who potential vendors could be.

- C. Evaluation criteria are listed below in their relative order of importance (Specific weighing may be used, but will not be required):
1. **Cost** – Initial, pro-rated implementation through June 30, 2010, with public launch of new site(s) scheduled for Spring 2010; and continued service, E-Ratable when/if appropriate, for subsequent fiscal years. Three separate cost breakdowns should be based on the three scenarios in item 2.
 2. **Implementation Flexibility** – Vendor-hosted CMS, client-hosted CMS with vendor-provided appliances, and/or client-hosted CMS with client-provided appliances.
 3. **Data Integration** – Ease and robustness of data integration for account creation and other administrative tasks through traditional means such as CSV import/export, as well as a proven track record with Lightweight Directory Access Protocol (LDAP), Open Directory Integration, SAML, etc.
 4. **Features & Functionality** – Ease of use for content creators and end users alike throughout a complete, well-rounded, and dynamic feature set that includes:
 - Flexible, hierarchical navigation
 - Flexible, hierarchical permissions
 - Flexible, hierarchical content approval
 - Flexible, customizable page templates
 - Preconfigured pages and sets of pages for classrooms, departments, teams, etc.
 - News and announcements
 - Calendars
 - Site search
 - User-specific login

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The District did not award a contract for the Web Hosting RFP. We did post a **Form 470 Application Number:** 337150000797962 on Dec 22, 2009 indicating a multiyear contract was sought.

Form 470 Application Number: 337150000797962
Applicant's Form Identifier: 2010-470a
Application Status: CERTIFIED
Posting Date: 12/22/2009
Allowable Contract Date: 01/19/2010
Certification Received Date: 12/22/2009
7 This Form 470 describes (check all that apply):
a. <input checked="" type="checkbox"/> Tariffed or month-to-month services to be provided without a written contract. A new Form 470 must be filed for non-contracted tariffed or month-to-month services for each funding year.
b. <input checked="" type="checkbox"/> Services for which a new written contract is sought for the funding year in Item 2.
Check if you are seeking <input type="checkbox"/> a multi-year contract

Service or Function:	Quantity and/or Capacity:
Internet Flat and Tiered	100mb
dedicated Internet Access	100 mb
monitored email accounts for students	5000
Web Hosting	District and 16 sites

USAC incorrectly interpreted the information provided and states;

“You failed to consider all bids submitted since you disqualified some bidders for not hosting other vendor’s contents”.

We assert USAC is in error on this determination. Since we had now fully reviewed the prior RFP information over a month earlier, we were able to review all initial information provided by the 10 bidders on the Form 470 more quickly to determine which vendors possessed the technical capabilities to support the upload/download of data required to sync with other District databases and to the level of integration needed on the website (these databases are not Erate eligible and may be housed at the District or offsite on other servers).

The training provided by USAC at that time was less detailed than current training details and we awarded based on “most cost effective solution”. We believe that USAC is retroactively applying new guidance to prior funding years. That training for 2009 is inserted below -



- **Selecting service providers**
 - **Applicants must choose the most cost-effective solution to their Form 470 or RFP, with price as the primary factor**
 - **Other factors can be considered, but price must be the most heavily weighted.**
 - **Evaluation process should be carefully documented and that documentation must be maintained.**

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Selective Review Information Request

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Response due: 11/9/13 – Extension granted

3) BID RESPONSES CONTINUED

FRN 2445212

Qwest (CenturyLink)

Cox

TW Telecomm

XO

FRN 2445584

Qwest (CenturyLink)

Cox

FRN 2445607

470 Proposals

Community School Builders

eChalk

Edline

Foxbright

FTC

School Loop

School Fusion

Schoolinx

SchoolsinSite

Sharp Schools

3 – During the SRIR response period we provided all documentation regarding the individual bids submitted. USAC made these additional comments in **Finding #1** –

“FCC rules require the applicant submits a bone fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services ordered and by submitting complete description of services requested so that it may be posted for competing providers to evaluate”.

We assert USAC is in error on this determination. The District did in fact conduct an internal needs assessment. The Form 470 did not include all the pages of specifics such as the RFP; however it was expected that Service providers seeing the vast number of campus locations would be experienced and savvy enough to provide sufficient information on services or correspond with the District as needed. Through a multi tiered evaluation process the District did do proper evaluations, met FCC and State procurement standards making sure they received a functional service.

The description that USAC uses ***“internal assessments of the components necessary”*** for additional comment are **most** closely tied to Internal Connections, **not** Internet access.

The fact that we received 10 bids from vendors would indicate there was sufficient basic information and all bidders were on a level playing field.

We request a FCC waiver on the issue of the additional details– we did not fail to conduct a competitive bidding process, we adhered to the relevant state and local procurement rules, there is no evidence of fraud, abuse or misuse of funds or a failure to adhere to the core program requirements.

Multi-tiered Vendor Evaluations

Multi-tiered Evaluation Processes

If you use a multi-tiered or multi-round evaluation process, the price of the eligible products and services must be the primary evaluation factor in EACH tier or round of the process.

The following is an example of such a process:

- In the first round, the applicant uses the following evaluation criteria:
 - Price of the eligible products and services (50 points)
 - Reference check (25 points)
 - Prior experience with the district (25 points)
- Bidders that do not receive at least 70 points in the first round are eliminated and not considered any further.
- In the second round, the applicant uses the following evaluation criteria:
 - Price of the eligible products and services (40 points)
 - Technical solution (35 points)
 - Price of any ineligible products and services needed in order to make the solution work (25 points)

Although the applicant did not consider bids that did not meet the 70-point threshold, the first round is not a disqualification because bidders were scored subjectively on references and prior experience with the district. Note that in each round the primary factor was the price of the eligible goods and services.

Last modified on 12/5/2008

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Arizona relevant state and local procurement rules -

Arizona State procurement -

15-213. **Procurement practice** B. After the bids submitted in response to an invitation for bids are opened and the award is made or after the proposals or qualifications are submitted in response to a request for proposals or a request for qualifications and the award is made, the governing board shall make available for public inspection all information, all bids, proposals and qualifications submitted and all findings and other information considered in determining whose bid conforms to the invitation for bids and will be the most advantageous with respect to price, conformity to the specifications and other factors or whose proposal or qualifications are to be selected for the award.

41-2533. **Competitive sealed bidding** G. The contract shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation for bids

41-2534. **Competitive sealed proposals** F. As provided in the request for proposals, and under rules adopted by the director, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to assure full understanding of the solicitation requirements and to permit revision of offers. Offerors shall be accorded fair treatment with respect to any opportunity for discussion. Revisions may be permitted after submission and before award. If discussions are conducted, all offerors who have submitted proposals that are determined by the procurement officer to be in the competitive range shall be invited to submit a final proposal revision. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

4 – During the prior SRIR response period we replied regarding Item #4 – Vendor Selection Process with the following comment:

470 – Bid Process:

A “Short List “was developed by removing vendors with bids at extremes. Bids that were very high or very low in cost were eliminated. Remaining vendor proposals were ranked by price. SchoolFusion was the lowest in cost. Since price is the lowest and met the criteria on the 470 in the selection process, SchoolFusion was selected through the evaluation processes.

This was interpreted by USAC to mean that we did not follow the basic guidelines for “*the price of eligible products and services was not the primary factor in the Vendor selection process*”.

Finding 2

After multiple requests for documentation and application review, it has been determined that this funding commitment must be rescinded in full. The price of eligible products and services was not the primary factor in the vendor selection process. The applicant eliminated the most expensive and the least expensive bidders. Since the applicant eliminated the lowest bidder the applicant did not demonstrate that price was the primary factor. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor in the vendor selection process. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.

We assert USAC is in error on this determination. Ten bids were received as listed in the table below.

The lowest price bidder in fact had no Erate eligible costs whatsoever (School loop),

School Fusion provided no pricing whatsoever and was marketing only,

Foxbright provided a pricing scale and based on District building was over \$ 92,000 however it was not a signed formal quote and was highest in cost,

E chalk was over \$ 89,000 but could not host other content,

the second lowest bid from School Inx had a mandatory 3yr contract violating the option to discontinue service if it was inferior,

Ultimately Centrifuge/Edline at \$ 18,624 was awarded a contract, provided all needed services and was lowest in cost meeting the requirement for price being the primary factor and selecting the most cost effective service offering. In addition they met both state and federal procurement requirements.

Inserted below are the full review details we conducted during the SRIR process and appeal period. This was done to re-verify that the most cost effective solution was in fact chosen due to the procedural error of not documenting each and every pass/fail determination originally.

E-Rate Bid Assessment- Notes Worksheet regarding all web hosting bids - on App												Page	1	of	1		
Year 13	Service	Information on bid selection for FCC appeal	Date	7/30/2014	Time												
		vendor	Notes 1			Notes 2			web site cost	training	account lics	one time	maint cost	total	ineligible		
	web hosting	Comm sch builder	web hosting = 100% eligible, one time & maint not Erate eligible			mutli yr, signed,dated, governing law - kansas -AZ procurement conflict			\$ 16,500				\$ 2,250	\$ 2,250	\$ 21,000	\$ 4,500	
						no garan,warranties,back up etc											
	web hosting	E chalk	web hosting = 94% eligible, no signature, no multl yr			postit note - does not meet proposal - doesn't host other content			\$ 33,915	\$ 15,960	\$ 34,500		\$ 5,100	\$ 89,475	\$ 5,100		
BE #	web hosting	Edline	web hosting = 85% eligible, no other ineligibles,signed			multi yr, flexible,can blend w existing content/sites			\$ 18,624	\$ -	\$ -	\$ -	\$ -	\$ 18,624	\$ -		
142906			single sign on w gaggle			Colorado law, but see actual contract doc 13 - in-valid shall be severed											
	web hosting	Foxbright	web hosting = % unknwn, signed, no actual quote,non compliant			\$ 500 + charge per instructional build = \$ 900 x 95 bids = \$ 85,500			\$ 90,000	\$ 1,900		\$ 750	\$ 300	\$ 92,950	?		
	web hosting	FTC	web hosting = 95%, all content must be uploaded,signed			postit note - does not meet requirements, cost per acct = \$ 2. x 14,500 =			\$ 29,000						\$ 29,000		
	web hosting	School loop	web hosting = 0% per page 4 , but all costs are ineligible			no eligible erate component, does not meet 470									\$ -		
	web hosting	School Fusion	no pricing - marketing only												\$ -		
	web hosting	School inx	web hosting - ? %, training costs not presented and unknown, no signed ,			3 yr requirement, no costing for shorter contract,			\$ 14,500			\$ 4,950		\$ 19,450	?		
						postit note states 15 sites same as 14, 2/10/2010 mandatory return date											
	web hosting	school insites	web hosting = 100%, signed, no multi yr, no hosting other content						\$ 10,800		\$ 10,000	\$ 1,695		\$ 22,495	\$ 1,695		
	web hosting	Sharp school	web hosting = 87%, signed			postit note - does not meet proposal - doesn't host other content			\$ 14,400	\$ 3,500	\$ 7,500			\$ 25,400	\$ 3,500		
School Name																	
	Alhambra	470#			337150000797962.00												

Chosen vendor - Centrifuge/Edline contract clause and contract pages-

13. **GENERAL:** This Agreement represents the complete and exclusive understanding between Client and Centrifuge regarding the Service and use thereof. If any provision of this Agreement is found to be void, invalid, or unenforceable, it shall be severed from and shall not affect the remainder of this Agreement, which shall remain valid and enforceable. Any such severed provision shall be replaced with a similar provision which conforms to applicable laws and embodies as closely as possible the original intent of the parties. This Agreement shall be governed by the internal laws of the State of Colorado. In the event of

Schedule B

B1. FEES:

B1.1. SETUP AND IMPLEMENTATION FEES:

Per Section 3.2 the Setup and Installation Fees shall be \$8,000 for 16 sites (One Time Fee Only).

B1.2. ANNUAL LICENSE FEES:

Per Section 3.3 License Fees shall be as follows:

Standard Annual License Fees:	\$19,200
Discount	3%
<hr/>	
1 st Year Annual License Fee:	\$18,624
2 nd Year Annual License Fee:	\$18,624
3 rd Year Annual License Fee:	\$18,624

B1.3. ADDITIONAL FEES:

Product/Service	Amount	Occurrence
Not Applicable	\$	

Unless otherwise noted herein there are no additional fees. Additional fees may be incurred for custom requests. The scope of work and such fees shall be finalized, quotes, and agreed upon prior to custom work commencing.

B1.4. SCHEDULE OF PAYMENTS:

Service Period	Type of Payment	Payment Amount	Invoice Date
2/1/2010 – 6/30/2010	Implementation and Set-up Fee (One Time Fee Only)	\$8,000	2/1/2010
2/1/2010 – 6/30/2010	Annual License Fee	\$6,400	2/1/2010
7/1/2010 – 6/30/2011	Annual License Fee	\$18,624	7/1/2010
7/1/2011 – 6/30/2012	Annual License Fee	\$18,624	7/1/2011
7/1/2012 – 6/30/2013	Annual License Fee	\$18,624	7/1/2012

B1.5. RENEWAL:

This Agreement will automatically renew for one-year periods. The Annual License Fee is subject to increase in the renewal year(s), not to exceed five percent (5%) of the Annual License Fee paid in the preceding one-year period.

Sales Person: Brian Damman, Inside Sales Consultant
Date: 1/22/2010

ALHAMBRA ELEMENTARY SCHOOL DISTRICT

CENTRIFUGE SOLUTIONS, LLC.

By: Linda Jeffries
Signature

By: [Signature]
Signature

Linda Jeffries, Community Relations Coord.
Print Name & Title

Stephen Shapiro
Print Name & Title

Date: 2/1/10

Date: 1/25/2010

5 – We request a waiver for the procedural error in not creating a scoring matrix at the time of award and a more detailed recording of the evaluation at the time. The facts indicate that we did adhere to the core program requirements and the contract award was cost effective to the most responsive bid.

6 – Arizona State contractual rules allow for contracts up to 5 years, as well as Arizona USFR standards for Public Schools and Procurement. A contract, bid acceptance or “Legally Binding Agreement” may be sought for up to Five years. The specific inserts are found below.

The new funding denial for the Erate yr 17 funding states –

FCC Form 471 Application Number: 943752
Funding Request Number: 2573936
Funding Status: Not Funded
Category of Service: Internet Access
FCC Form 470 Application Number: 337150000797962
SPIN: 143028153
Service Provider Name: Edline, LLC
Contract Number: N/A
Billing Account Number: 602 336 2920
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2014
Service End Date: N/A
Contract Award Date: 02/01/2010
Contract Expiration Date: 06/30/2015
Shared Worksheet Number: 1627230
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$16,621.92
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$16,621.92
Discount Percentage Approved by the USAC: 90%
Funding Commitment Decision: \$0.00 - Selective - Bidding Violation
Funding Commitment Decision Explanation: MR1: The Contract Award Date was changed from 01/19/2010 to 02/01/2010 to agree with the documentation provided during the review of the FCC Form 471. <><><><><> MR2: Although Block 7b of your Funding Year 2010 FCC Form 470 indicates you were seeking a multi-year contract, your contract does not include a definite end to the number of extensions. Program requirements do not allow for contracts with indefinite terms. Therefore, you must file a new FCC Form 470, evaluate your bids and sign a new contract with a finite contract term for the next Funding Year for which you will seek this service. <><><><><> DR1: Based on

There is no FCC language included in the Form 470 or Form 471 directions specifically stating that an applicant must decide ahead of time the specific time frame for a contract unless it is in the prevailing “signed agreement” or required by state or federal law.

The original Form 470 requested multiyear, and each year renewal agreements were signed/countersigned up to the 5 year limit,

ARS Procurement Code -

§ 41-2546. Multiterm contracts

- A. Unless otherwise provided by law, a contract for materials or services may be entered into for a period of time up to five years and a contract for job-order-contracting construction services may also be entered into for a period of time up to five years, as deemed to be in the best interest of this state, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. A

Arizona USFR -

**UNIFORM SYSTEM OF FINANCIAL RECORDS
FOR
ARIZONA SCHOOL DISTRICTS**



ACCOUNTING PROCEDURES

EXPENDITURES

5/12

VI-G-12

Multiple Year Purchases

Districts may enter into contracts for up to 5 years. When using multi-term contracts, the terms and conditions of renewal or extension, if any, must be included in the solicitation for bids, proposals, or quotations, and monies must be available for the first fiscal year at the time of contracting. Also, contracts for materials or services and contracts for job-order-contracting construction services may be entered into for more than 5 years if, before the procurement solicitation is issued, the governing board determines in writing that a contract of longer duration would be advantageous to the district. Payment and performance obligations for succeeding fiscal years are subject to the availability and appropriation of monies.

Re: Centrifuge Contract

Dear Nan:

Thank you for using **SchoolFusion** from Blackboard Engage! We are pleased, once again, to present this exceptional web hosting service, used by thousands of schools in all 50 states and across the globe.

Previously, we entered into a one-year E-Rate contract with optional one-year extensions. If you would like to exercise the extension option and renew your SchoolFusion Web Hosting Services for an additional year, please indicate your acceptance by signing the following page and returning a copy of the enclosed extension agreement to 312.236.7251 (fax) or erate@edline.com (email).

The USAC denials do not serve the public interest, they will have an adverse financial impact on our school and to approve the request for appeal and waiver will not lead to an undue advantage in funding. The vendor chosen was the most cost effective and met all procurement criteria and District needs.

Thank you for processing our appeal and request for waiver,

Sincerely,

Signed: *Nan Williams*
Title
Director of Technology

Nan Williams

Director of Technology

4510 N. 37th Ave.

Phoenix, AZ 85019-3206

(602) 336-2953

FAX (602)336-0313

nanwilliams@alhambraesd.org

Attachments –

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USAC Funding commitment letter Page 1

Arizona Procurement, USAC Contract clauses, vendor responsibilities

USAC post commitment training providing additional bid clarification

FCC DOCKETS in support of our Appeal and request for waivers

FCC dockets DA 10-175, 11 -723, 11-1039, 11 - 1087, 11-1368, 11-1554,
11 – 1991, 12 – 962, 14 – 344

Full page view of post commitment bid result / review notes



Schools and Libraries Division



FUNDING COMMITMENT DECISION LETTER
(Funding Year 2014: 07/01/2014 - 06/30/2015)

November 5, 2014

Dr. Nan Williams
ALHAMBRA ELEM SCH DISTRICT 68
4510 N 37TH AVE
PHOENIX, AZ 85019-3206

Re: FCC Form 471 Application Number: 943752
Billed Entity Number (BEN): 142906
Billed Entity FCC Registration Number (FCC RN): 0007472632
Applicant's Form Identifier: 471 - Tecom_IA

Thank you for your Funding Year 2014 application for Universal Service Support and for any assistance you provided throughout our review. The current status of the funding request(s) in the FCC Form 471 application cited above and featured in the Funding Commitment Report(s) (Report) at the end of this letter is as follows.

- The amount, \$458,355.13 is "Approved."
- The amount, \$37,459.69 is "Denied."

Please refer to the Report following this letter for specific funding request decisions and explanations. The Universal Service Administrative Company (USAC) is also sending this information to your service provider(s) so preparations can begin for implementing your approved discount(s) after you file FCC Form 486, Receipt of Service Confirmation Form. A guide that provides a definition for each line of the Report is available in the Guide to USAC Letter Reports in the Reference Area of our website.

NEXT STEPS

- Work with your service provider to determine if you will receive discounted bills or if you will request reimbursement from USAC after paying your bills in full.
- Review technology planning approval requirements.
- Review Children's Internet Protection Act (CIPA) requirements.
- File FCC Form 486.
- Invoice USAC using the FCC Form 474, Service Provider Invoice (SPI) Form, or FCC Form 472, Billed Entity Applicant Reimbursement (BEAR) Form, - as products and services are being delivered and billed.

TO APPEAL THIS DECISION:

If you wish to appeal a decision in this letter to USAC, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address for the person who can most readily discuss this appeal with us.

Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-0685
Visit us online at: www.usac.org/sl



In support of our appeal;

“All contract clauses shall be consistent with the provisions of ARS Title 41 - Chapter 23 ARIZONA PROCUREMENT CODE, and Article 9 - Legal and Contractual Remedies as if included herein and ARS code shall prevail”.

USAC Training- Contracts

In general, a contract is a binding agreement, enforceable by law, between two or more parties that creates an obligation to do, or not do, something. Contract definitions and requirements are contained in each state's or territory's contract law.

Except for services to be delivered under non-contracted tariffed or month-to-month arrangements, applicants must sign a contract with the service provider before signing and submitting a completed FCC Form 471 (Description of Services Ordered and Certification Form). Applicants must be able to demonstrate that they had a signed and dated contract in place at the time they submitted a completed FCC Form 471.

Applicants must also comply with state and/or local contract law. Obtaining the service provider signature and date is not a program requirement, but state and/or local contract law may include this or other compliance requirements.

USAC - Vendor responsibilities

However, service providers also have a responsibility to respond to posted FCC Forms 470 and RFPs with specific requests for information necessary to prepare responsive bids. Simply sending a generic email to the applicant saying that the service provider can provide the general type of service requested and requesting a call-back would not be considered a good faith response to an FCC Form 470 posting. Emails that can be identified as "spam" do not require a response – especially if the applicant has indicated in the FCC Form 470 and/or RFP a specific procedure or mechanism for submitting questions.



Forms 470 and RFPs

Imposing Restrictions

- Set some eligible services requirements
 - Applicants may require service providers to provide services that are compatible with one kind of system over another (e.g. Cisco compatible).
 - Applicants cannot state make and model on Form 470 or RFP, may state equivalent make and model



Forms 470 and RFPs

Imposing Restrictions

- Disqualifying Bidders cont'd
 - Disqualification factors should have yes/no responses and cannot be scored on a **range**
 - **Yes/No Examples**
 - Was the bid submitted by the response date?
 - Was the bid certified?
 - Did the vendor attend the pre-bid walk through?
 - **Range Score Examples**
 - Using on a scale to rank the vendors (e.g., Very high, high, poor)



Competitive Bidding

Applicants can:

- Have pre-bidding discussions with potential bidders as long as that doesn't lead to one bidder having "inside" information
- Attend product demonstrations
- Encourage and seek vendors to bid
- Do research to determine what cost-effective solutions are available



FCC Form 470 & RFPs

Tips for Success

- Applicants must ensure that they post for the correct category or categories of service (Non-allowable m&c correction. Must repost FCC Form 470)
- Sufficient detail in FCC Form 470
 - Cannot provide generic descriptions (e.g., "All eligible telecom services" or "Digital Transmission Services")
 - Cannot provide laundry lists of products and services
- Addendums or changes to the RFP may require applicants to re-start the 28 day period when there is a significant change to the original scope of the procurement

Imposing Restrictions

- Setting eligible services requirements
 - Applicants may require service providers to provide services that are compatible with one kind of system over another (e.g., Cisco compatible).
 - Applicants cannot state make and model on FCC Form 470 or RFP, but may state **equivalent make & model** (e.g., “IBM router 628 or similar functionality”)
 - Applicants should avoid using specific manufacturer’s name to request a service (e.g., **Don’t** use Kleenex, **use** tissue instead)

Vendor Selection

Bid Evaluation

- Applicants may use a multi-tier vendor selection process when evaluating bids, but ultimately, **price must be the primary factor** in selecting a qualified vendor
- Technical capabilities, such as scope or quality of service, may be the first tier to assess the bid
 - This tier may be evaluated on a **pass-fail basis** or **scored numerically**, where a minimum score is required to advance to the next tier of the evaluation process.

USAC - 2012 Training after the 2009 filing -



Bid Evaluation Matrix (Points Based) SAMPLE

There have been many requests for USAC to provide guidance with respect to what information should be included as you conduct your bidding process. Below is an example of information that may be helpful. In addition, retaining this type of information will be very helpful if USAC requests this information in the future. This example is not mandatory or intended to serve any other purpose than to respond to requests for guidance.

In this example, each factor is worth the same number of points as the weighting percentage. Vendors are rated on how well they met each factor. The entries for all factors are then totaled for each vendor. The winning bidder is the one with the highest number of total points. The cost of the eligible products and services must be weighted most heavily.

Number	Factors	Total Points Available	Vendor 1 143xxxxxx ABC Inc.	Vendor 2 143xxxxxx DEF Inc.	Vendor 3 143xxxxxx GHI Inc.	Vendor 4 143xxxxxx JKL Inc.
1	1 Cost of Eligible Products and Services	40*	38	25	38	0
2	2 Experience	20	18	17	20	0
3	3 Availability	10	10	8	7	0
4	4 Minority Business Status	10	6	9	9	0
5	5 In State Preference	10	3	7	10	
6	6 Cost of Ineligible Products	5	4	1	5	
7	7 Project Management Expertise	5	2	1	5	
Total Points		100	81	68	94	0

*This number must be higher than all of the other numbers in this column.

Winning Bidder:

Vendor 3 (GHI, Inc.) is the winning bidder because it has the highest total points.

Disqualified Bidders:

JKL Inc.

All interested bidders received two weeks' notice of a required pre-bid conference.

JKL Inc. did not attend this conference and did not provide a reason for its absence.

Revised 9/2012

1. Eligible Services

100. *Web Hosting.* Based on the record before us, we find that web hosting should continue to receive priority one funding.³⁰⁸ Comments provided compelling examples of how web hosting is essential for facilitating teaching and learning as well as communication among the entire school community.³⁰⁹ For example, teachers use individual web pages to post homework assignments, collect completed homework from students, post messages to students and parents, and respond to student or parent questions.³⁰⁰ Web pages also can increase learning time outside of school by providing students and parents with 24/7 access to classroom information and supplemental educational resources.³⁰¹ Moreover, parental and family engagement in a child's school has been linked to improved educational outcomes for students.³⁰² Web hosting, as the commenters have shown, is an example of a service that can provide a substantial educational impact for a relatively small cost.³⁰³

101. We are also persuaded that features that facilitate the ability to communicate, such as blogging, e-mailing over a school or library's hosted website, discussion boards, and services that may

facilitate real-time interactive communication such as instant messaging or chat, should be eligible for E-rate funds as part of a web hosting package.³⁰⁴ Therefore, we revise the ESL to include those features of web hosting. This decision alters prior decisions limiting web hosting support to hosting a school or library's static website and excluded the ability to engage in interactive activity such as blogging.³⁰⁵ We recognize that the transfer of messages across a school's hosted website is functionally equivalent to other services that facilitate the ability to communicate such as e-mail, text messaging, voice mail, and paging. We remind applicants, however, that content – including content created by third-party vendors, and any features involving data input or retrieval – including searching of databases for grades, student attendance files, or other reports – remains ineligible.³⁰⁶ In addition, support for web hosting will not include support for the applications necessary to run online classes or collaborative meetings.³⁰⁷

§ 54.511 Ordering Services.

(a) Selecting a provider of eligible services. In selecting a provider of eligible services, schools, libraries, library consortia, and consortia including any of those entities shall carefully consider all bids submitted and must select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers, but price should be the primary factor considered.

(b) Competitive Bid Requirements. Except as provided in § 54.511(c), an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under § 54.502. These competitive bid requirements apply in addition to state and local competitive bid requirements and are not

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intended to preempt such state or local requirements.

competitive bidding process, including bid requests, bid proposals, and cost evaluation criteria.³⁸ We find no evidence in the record that these petitioners failed to conduct a competitive bidding process that adhered to relevant state and local procurement laws.³⁹ Based on these factors, we find that the petitioners' competitive bidding processes did not violate program rules. In addition, in the record at this time, there is no evidence of waste, fraud or abuse, or misuse of funds, or a failure to adhere to core program requirements.

10. USAC also determined that the 11 petitioners listed in Appendix B, who in the aggregate are appealing the denial of 12 applications, failed to assign the highest weight to the price category during their respective bid evaluations, and thus violated the Commission's competitive bidding requirements.⁴⁰ We agree with USAC's determination that the petitioners did not comply with the Commission's rule to assign the highest weight to price when evaluating bids. Nevertheless, the record shows that for seven petitioners,⁴¹ the winning vendor's cost proposal was lower than the competing bids and therefore the applicants selected the least expensive service offering.⁴² With regard to three other petitioners, Killeen,

Lee, and Florence, the record shows that each petitioner considered multiple bids, but only one bid was responsive to the FCC Form 470 postings.⁴³ As a result, in each of these three instances, the responsive bid necessarily offered the lowest price.⁴⁴ Therefore, consistent with the policy goals underlying the Commission's competitive bidding rules, the least expensive responsive service offering was ultimately selected by 10 of the 11 petitioners that failed to assign the highest weight to the price category.

11. Point Pleasant was the other applicant that involved a failure to assign the highest weight to the price category for purposes of bid evaluations. The record shows that Point Pleasant had a choice of two vendors from a New Jersey state master contract, Arch Wireless and Mid-State Paging, Inc.⁴⁵ When evaluating each proposal, Point Pleasant assigned an 80 percent weight to performance and a 20 percent weight to price.⁴⁶ In its request for review, Point Pleasant explains that it gave performance a higher weighting because based on its past experience, it wanted to ensure that the school received a functional service.⁴⁷ Point Pleasant explains that, in the previous funding year, it selected Arch Wireless because its proposal offered the lowest price.⁴⁸ Its equipment, however, did not work in Point Pleasant's buildings.⁴⁹ We understand why, in these specific circumstances, Point Pleasant considered it important to protect itself from a recurrence of that situation. In that regard, we note that consistent with E-rate program rules, Point Pleasant could have set up the bidding process in a way that disqualified Arch Wireless before even

considering price as a factor.⁵⁰ We therefore grant its waiver request based on these unique circumstances. We recognize that if the petitioner had disqualified Arch Wireless from the bidding process based on past performance, then Mid-State Paging, Inc. would have been the lowest qualified bidder. Given these circumstances, we find that a waiver of our rules in Point Pleasant's case is appropriate and in the public interest.

12. In sum, based upon our review of the underlying record, we find that the 12 appeals by the petitioners listed in Appendix B conducted a competitive bidding process that resulted in the selection of the most cost-effective service offering.⁵¹ Moreover, we find no evidence of any violation of state or local procurement laws. We thus believe that rejecting the petitioners' funding requests is not warranted in these circumstances. Rather, we find that a limited waiver of sections 54.503(c)(2)(vii) and 54.511(a) of the Commission's rules is in the public interest given the facts of each case and that this determination results in more effective implementation of Commission policy on competitive bidding.⁵² In addition, in the record at this time, there is no evidence of waste, fraud or abuse, or misuse of funds. Accordingly, we waive sections 54.503(c)(2)(ii) and 54.511(a) of the Commission's rules for the petitioners listed in Appendix B and remand the underlying applications to USAC for further action consistent with this order.

13. *Consideration of All Bids Submitted.* USAC denied funding to two petitioners, the School District of the City of River Rouge (River Rouge) and Whittier City School District (Whittier), on the ground that they failed to consider all bids submitted in response to their FCC Form 470 postings.⁵³ Specifically, the record shows that River Rouge received two bids in response to its FCC Form 470 posting and request for quotes (RFQ), one from Advanced Networking Group (ANG) and the other from SER Communications.⁵⁴ River Rouge evaluated each bid, despite the fact that they were both filed after the submission deadline.⁵⁵ Based on state and local bidding requirements for establishing a qualified bid,

⁵⁰ Specifically, Point Pleasant could have used a multi-tiered bid evaluation process in which the first tier could have assessed whether a proposal satisfied minimum technical capabilities, such as the quality of service. Bids under this tier could have been evaluated on a pass-fail basis, which is currently allowed. All bids satisfying first tier requirements then could have moved to the next tier of the evaluation process where other criteria could have been assessed, including price. See USAC website, Schools and Libraries, Schools and Libraries Applicants, Service Providers, <http://www.usac.org/sl/applicants/step04/construct-evaluation.aspx> (last visited Apr. 5, 2011).

River Rouge subsequently rejected SER Communications' bid because it was incomplete and failed to respond to all of the items requested in the RFQ.⁵⁶ In its request for review, River Rouge argues that it used price as a primary consideration in selecting the ANG proposal and determined that ANG presented the most cost-effective service offering.⁵⁷ We find that nothing in the record indicates that River Rouge evaluated the responsive bidders in a manner inconsistent with E-rate program rules. The record shows that River Rouge considered each bid it received and rejected the SER Communication's bid only after determining that the bid was incomplete. Finally, nothing in the record demonstrates any evidence of waste, fraud or abuse, or misuse of funds.

14. The record shows that Whittier also considered all bids. Whittier received two bids in response to its FCC Form 470 posting seeking wireless Internet access on a district-wide basis.⁵⁸ One bid, submitted by its current Internet service provider, Trillion Partners, Inc., (Trillion), proposed to provide wide area network (WAN) services for wireless Internet access to all 14 district sites for a monthly charge of \$17,571.⁵⁹ According to Whittier, the Trillion proposal was reflected in a detailed proposed service agreement.⁶⁰ The other bid, submitted by Advanced Scientific Applications, Inc., (ASA) proposed a monthly charge of \$69,986 for dedicated wireless Internet access for digital signal level 3 (DS3) lines for each district site.⁶¹ No other detail was provided in the ASA proposal.⁶² Upon further inquiry into the specifics of ASA's proposal, Whittier learned that ASA could not provide wireless Internet access on a district-wide basis, which was precisely the service that Whittier was seeking.⁶³ Based on our review of the record, we find that Whittier also evaluated the responsive bidders consistent with E-rate program rules. The fact that Whittier initiated contact with ASA to discuss the proposal's terms and conditions, and only rejected the proposal after learning that ASA could not provide the requested services leads us to conclude that Whittier carefully considered ASA's submission. Moreover, there is no evidence of waste, fraud or abuse, or misuse of funds.

contract, the applicant must file an FCC Form 471 requesting support for eligible services.¹⁵ USAC assigns a funding request number (FRN) to each request for discounted services and issues funding commitment decision letters (FCDLs) approving or denying the requests for discounted services.¹⁶

5. *Request for Review*. In December 2007, Ramirez submitted an FCC Form 470 application to USAC to initiate the competitive bidding process for E-rate eligible services.¹⁷ In January 2008, Ramirez subsequently entered into service contracts and filed its FCC Form 471 application with USAC for funding year (FY) 2008.¹⁸ In April 2009, USAC denied Ramirez's FCC Form 471 application on the ground that Ramirez violated the Commission's competitive bidding rules because it issued an RFP, despite having indicated on its FCC Form 470 that no RFP existed.¹⁹ USAC later affirmed its decision on appeal.²⁰ Ramirez then filed the instant appeal with the Commission.²¹

6. In its request for review, Ramirez states that its FCC Form 470 was the RFP and that the FCC Form 470 contained sufficient information for service providers to submit bids.²² Ramirez claims that its failure to indicate on the FCC Form 470 that an RFP existed was an unintentional, technical error.²³ Ramirez also states that its district is located in a rural, remote area where only one vendor provides telecommunications and Internet services.²⁴ Ramirez further maintains that it has not been contacted by any other prospective vendors during the bidding process for the last 10 years.²⁵

record shows that Ramirez violated E-rate program rules by failing to indicate on its FCC Form 470 that it planned to issue an RFP for the underlying funding requests (FRNs 1668486, 1668490, 1668503, 1668528, and 1668550). However, because Ramirez's FCC Form 470 contained enough detail for service providers to identify the desired services and to formulate bids, we find that all bidders were on a level playing field despite this failure.²⁷ In addition, the record shows that Ramirez only received one bid and there was no contact by any other prospective vendors during the bidding process.²⁸ Consistent with precedent, we thus conclude that rejecting Ramirez's funding requests on the ground that Ramirez failed to advise bidders that an RFP existed is not warranted in this instance.²⁹ Rather, we find that a limited waiver of section 54.503 of the Commission's rules is in the public interest and that this determination results in more effective implementation of Commission policy on competitive bidding.³⁰ Accordingly, we waive section 54.503 of the Commission's rules and remand the underlying funding requests as part of Ramirez's FY 2008 FCC Form 471 application to USAC for further action consistent with this order. In remanding these funding requests to USAC, we make no finding as to the ultimate eligibility of the services requested therein.³¹

6. *Requests for Review.* The petitioners submitted their FCC Forms 470 to USAC to initiate the competitive bidding process for E-rate eligible services.²² Subsequently, the petitioners entered into contracts with their respective service providers and filed their FCC Form 471 applications for various funding years.²³ USAC denied the petitioners' applications on the ground that the petitioners violated the Commission's competitive bidding rules.²⁴ Specifically, the petitioners' requests for funding were denied because either they did not provide documentation showing that the vendor selection process complied with program rules, there was improper service provider participation in the competitive bidding process, the vendor selection documentation was created after the contract award date, they did not conduct a fair and open competitive bidding process, they failed to adhere to their own evaluation criteria in the vendor selection process, or they did not carefully consider all bids submitted in response to their FCC Form 470 postings.²⁵ USAC later affirmed these decisions on appeal.²⁶ The petitioners then filed the instant requests for review with the Commission.²⁷

8. *Free Public Library of Philadelphia.* USAC denied one funding request in Philadelphia's funding year 2009 application on the ground that its vendor selection documentation was created after the contract award date.³⁰ In its request for review, Philadelphia states that its vendor evaluation process was based on bids received before the contract award date and that it signed a contract with the lowest bidder on January 30, 2009.³¹

9. After reviewing the record before us, we find that USAC erred in denying Philadelphia's request for support. The record shows that, on December 12, 2008, Philadelphia posted its FCC Form 470 to USAC's website seeking bids for Internet access services.³² The record also shows that Philadelphia received three bids in response to this posting on December 19, 2008, January 14, 2009, and January 20, 2009.³³ In its request for review, Philadelphia provides two screen prints of its bid evaluation worksheets.³⁴ One worksheet, dated December 26, 2008, does not represent a complete bid assessment because two of the bids had not yet been received.³⁵ The other worksheet, dated February 2, 2009, appears to illustrate a complete bid evaluation.³⁶ Although the February worksheet is dated after

Philadelphia signed a service contract for the underlying services, the record contains other evidence showing that the vendor evaluation process took place before the contract award date. Specifically, Philadelphia provides an email communication documenting that it evaluated all three bids before selecting the winning vendor on January 30, 2009.³⁷

10. Furthermore, Philadelphia explains that it submitted its FCC Form 471 application on February 2, 2009, and inserted that date on its bid evaluation worksheet.³⁸ There is no Commission requirement that vendor selection documentation be dated before the contract award date. The fact that Philadelphia dated its paperwork after the contract award date because that was the date it submitted its application does not undermine the evidence that Philadelphia's selecting official properly considered the bids and made a selection on January 30. Based on these factors, we find that Philadelphia's competitive bidding process did not violate program rules. In addition, in the record at this time, there is no evidence of waste, fraud or abuse, or misuse of funds, or a failure to adhere to core program requirements. We therefore grant Philadelphia's request for review.

3. After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.¹² The Commission's rules require that an applicant carefully consider all submitted bids prior to entering into a contract, and price must be the primary factor in selecting the winning bid.¹³ Once the applicant has selected a provider and entered into a service contract, the applicant must file an FCC Form 471 requesting support for eligible services.¹⁴ USAC assigns a funding request number (FRN) to each request for discounted services and issues funding commitment decision letters (FCDLs) approving or denying the requests for discounted services.¹⁵

4. *Baltimore's Request for Review.* On November 4, 2006, Baltimore submitted an FCC Form 470 to initiate the competitive bidding process for E-rate eligible services.¹⁶ Baltimore then entered into a multi-year contract with Verizon to provide telecommunications services and Internet access.¹⁷ On February 7, 2007, Baltimore filed an FCC Form 471 application seeking support for the underlying services.¹⁸ USAC subsequently approved the funding requests at issue in Baltimore's funding year 2007 application.¹⁹ During post-funding review, however, USAC rescinded Baltimore's funding commitment for FRNs 1566234, 1583021, 1566299, 1612695, and 1570796 as part of its funding year 2007 applications on the ground that Baltimore did not consider price as the primary factor in each tier of its multi-tier vendor selection process.²⁰ Baltimore then filed the instant appeal with the Commission.²¹

5. In its appeal, Baltimore argues that it complied with all federal, state, and local competitive bidding requirements and considered price as the primary factor in selecting the bidder that would meet its needs.²² Baltimore states that Verizon also offered the lowest price of the two proposals submitted, by \$86 million.²³ Baltimore further argues that there is no Commission rule or policy providing guidance

concerning the use of a multi-tier vendor selection process and that USAC may not impose any such requirements on its own.²⁴ Finally, Baltimore asserts that if the Commission were to adopt such a rule or policy, it could not be applied retroactively to the FRNs at issue.²⁵

7. In its appeal, Cobb states that its bid evaluation process was identical for each of the procurements at issue and complied with its local purchasing regulations, which in turn, were based on the National Institute of Government Purchasing, Inc.'s (NIGP) purchasing regulations.³² Cobb also maintains that each of its procurement processes complied with the Commission's *Ysleta Order* by ensuring that price was ranked the highest of the evaluation criteria.³³ Cobb states that it conducted an

initial evaluation round to determine whether bidders' substantive proposals were sufficiently responsive to the specifications outlined in Cobb's RFP.³⁴ Cobb thus maintains that the initial evaluation round resulted in the disqualification of two proposals because of deficiencies in those proposals.³⁵ Cobb asserts that its evaluation process was explained in its RFP and therefore put all bidders on notice of its evaluation procedure.³⁶ Cobb further argues that neither the *Ysleta Order* nor any other Commission E-rate order indicates that the disqualification of a proposal because it is non-responsive must be based on binary criteria as USAC concluded in its decision denying funding.³⁷ Therefore, Cobb argues that USAC improperly established a prohibition against using a scored evaluation to disqualify vendors' proposals after Cobb conducted its procurements, and then retroactively applied the new prohibition in denying Cobb's funding requests.³⁸

III. DISCUSSION

8. We grant Baltimore's and Cobb's requests for review.³⁹ Based on the record before us and consistent with precedent, we find that the procurement processes at issue complied with the Commission's competitive bidding rules and state procurement requirements.⁴⁰ Specifically, we find that the applicants' multi-tier evaluation processes did not violate the Commission's competitive bidding requirements because the applicants provided documentation demonstrating that price was given the highest weight during their respective bid evaluation processes.⁴¹

2003.¹² In March 2004, USAC approved Tulsa's FY 2003 FCC Form 471 application for telecommunications services and Internet access.¹³ During post-funding review, however, USAC rescinded Tulsa's funding commitment for FRN 980351 from its FY 2003 FCC Form 471 application on the ground that Tulsa violated the Commission's competitive bidding requirements.¹⁴ Specifically, USAC found that Tulsa included the price of ineligible items (i.e., "costs associated with changing phone numbers") in its evaluation of the most cost-effective proposal during the vendor selection process.¹⁵ Tulsa then filed an appeal of USAC's notification of commitment adjustment letter with the Commission.¹⁶

5. In its appeal, Tulsa argues that it did not include ineligible products and services in its vendor selection process.¹⁷ Tulsa maintains that during post-funding review, it informed USAC that it selected AT&T because it offered the lowest price and was the most cost-effective solution.¹⁸ Tulsa also explains that AT&T was the existing provider and that the "[c]osts to change to another provider (change phone numbers and incur activation fees) [was] too high in comparison to any cost savings gained from switching providers."¹⁹ Tulsa argues that USAC's decision to rescind funding was based on a misunderstanding of what Tulsa meant by this explanation.²⁰ Tulsa asserts that the cost to change providers was meant to denote activation fees and primary interexchange carrier change charges, both of which are eligible charges.²¹ Thus, Tulsa maintains that its vendor selection process did not violate the Commission's competitive bidding requirements and that staying with AT&T was the most cost-effective solution.²²

III. DISCUSSION

6. We grant Tulsa's appeal. After review of the record, we find that Tulsa complied with the Commission's competitive bidding requirements for FRN 980351.²³ Specifically, we conclude that USAC erred in rescinding Tulsa's funding commitment for FRN 980351 as part of its FY 2003 FCC Form 471 application on the ground that Tulsa included the prices of ineligible products and services in

the vendor selection process.²⁴ According to the eligible services list for FY 2003, presubscribed interexchange carrier (PIC) change charges and change fees were eligible for discounts.²⁵ We therefore find that Tulsa's consideration of the costs associated with changing providers – i.e., PIC change charges and activation fees – was consistent with the Commission's competitive bidding rules.

7. We thus conclude that rejecting Tulsa's funding request on the ground that Tulsa's vendor selection process violated the Commission's competitive bidding rules is not warranted in this instance. In addition, we find no evidence in the record at this time of waste, fraud or abuse, or misuse of funds, or a failure to adhere to core program requirements with respect to this procurement. We therefore grant Tulsa's appeal and direct USAC to discontinue recovery actions against Tulsa and AT&T concerning FRN 980351 as part of Tulsa's FY 2003 FCC Form 471 application.²⁶ To the extent any funds have already been recovered from the parties under this underlying funding request, we direct USAC to refund the parties no later than 60 days from the release date of this order.

therefore decline to bid on the requested services.²² Because the Commission had not provided specific instruction on how to reference manufacturers or brands in an FCC Form 470 or a request for proposal, applicants may have reasonably believed that it was permissible to identify desired services using a vendor's name as part of the description.

7. We decline to penalize Queen of Peace, or other applicants who may have engaged in this practice before the release of this order. We have reviewed the specific facts in this case and conclude that the competitive bidding process was not tainted. On the same FCC Form 471 on which Queen of Peace improperly indicated that it sought "Edline" services, it also indicated more generally that it was seeking bids for web-hosting services. In response, several service providers in addition to Edline submitted bids. The descriptions in the Form 470 thus did not prevent other vendors from submitting bids for web-hosting services, and we conclude that the errant description did not undermine the competitive bidding process.²³ The record also shows that Queen of Peace selected Edline as its service provider based on price, experience, and technical capabilities. Accordingly, we grant the request for review filed by Queen of Peace and remand its application to USAC for further processing consistent with this order.

8. We conclude, however, that allowing applicants to reference specific vendors in their Form 470 or RFP poses a risk to the competitive bidding process. We therefore clarify that, for Form 470s or RFPs posted for Funding Year 2013 or thereafter, applicants must not include the manufacturer's name or brand on their FCC Form 470 or in their RFPs unless they also use the words "or equivalent" to describe the requested product or service. Such a description ("or equivalent") will prevent the Form 470 or RFPs from being construed as requiring only a specific product or service provider, which could undermine the competitive bidding process by eliminating the opportunity for the applicant to purchase an equivalent or better product that may be less expensive or to choose a less expensive service provider.

requirements.⁴ Specifically, USAC determined that Colorado Springs's vendor selection documentation did not clearly demonstrate that price was the primary factor in the vendor selection process.⁵ Upon review of the record, we agree with USAC's determination that it is unclear that Colorado Springs assigned the highest weight to price when evaluating bids. Nevertheless, the record shows that, for each of the funding requests at issue, Colorado Springs selected the least expensive and most cost-effective service offering.⁶ We therefore find that, in these instances, a waiver of sections 54.503(c)(2)(vii) and 54.511(a) of the Commission's rules, which require applicants to use price as the primary factor in the vendor selection process, is in the public interest.⁷ Further, at this time, there is no evidence of waste, fraud and abuse in the record. On our own motion, we also waive section 54.507(d) of the Commission's rules and any USAC procedural deadline, such as the invoicing deadline, that might be necessary to effectuate our ruling.⁸ We find good cause to waive section 54.507(d) because filing an appeal of a denial is likely to cause petitioners to miss the program's subsequent procedural deadlines in that funding year.

Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program).⁴ In each decision, USAC found violations of the Commission's competitive bidding requirements.⁵ Based on our review of the record, we find that Central Islip and Jennings have demonstrated good cause to waive sections 54.503 and 54.511 of the Commission's rules.⁶ In particular, the record here persuades us that: (1) their competitive bidding processes were not compromised by their technical violation of the Commission's competitive bidding requirements; and (2) the outcomes of their vendor selection processes were otherwise consistent with the policy goals underlying the Commission's competitive bidding rules.⁷ Additionally, at this time, there is no evidence of waste, fraud or abuse in the record. Given these circumstances, we remand the underlying applications to USAC for further action consistent with this Order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application and issue an award or a denial based on a complete review and analysis no later than 60 calendar days from the release date of this Order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the underlying applications.

E-Rate Bid Assessment-Notes Worksheet regarding all web hosting bids - on Appx										Page	1	of	1
Year 13	Service	Information on bid selection for FCC appeal			Date	7/30/2014	Time						
		vendor		Notes 1			Notes 2						
	web hosting	Comm sch builder	web hosting = 100% eligible, one time & maint not E-rate eligible			multi yr, signed, dated, governing law - kansas -AZ procurement conflict							
						no garan, warranties, back up etc							
	web hosting	E chalk	web hosting = 94% eligible, no signature, no multi yr			positit note - does not meet proposal - doesn't host other content							
BE #	web hosting	Edline	web hosting = 85% eligible, no other ineligible, signed			multi yr, flexible, can blend w existing content/sites							
142906			single sign on w gaggle			Colorado law, but see actual contract doc 13 - in-valid shall be severed							
	web hosting	Foxbright	web hosting = % unknown, signed, no actual quote, non compliant			\$ 500 + charge per instructional build = \$ 900 x 95 bids = \$ 85,500							
	web hosting	FTC	web hosting = 95%, all content must be uploaded, signed			positit note - does not meet requirements, cost per acct = \$ 2. x 14,500 =							
	web hosting	School loop	web hosting = 0% per page 4, but all costs are ineligible			no eligible erate component, does not meet 470							
	web hosting	School Fusion	no pricing - marketing only										
	web hosting	School inx	web hosting - ? %, training costs not presented and unknown, no signed,			3 yr requirement, no costing for shorter contract,							
						positit note states 15 sites same as 14, 2/10/2010 mandatory return date							
	web hosting	school insites	web hosting = 100%, signed, no multi yr, no hosting other content										
	web hosting	Sharp school	web hosting = 87%, signed			positit note - does not meet proposal - doesn't host other content							
	School Name												